



County of Los Angeles
INTERNAL SERVICES DEPARTMENT

1100 North Eastern Avenue
Los Angeles, California 90063


"To enrich lives through effective and caring service"

Telephone: (323) 267-2101
FAX: (323) 264-7135

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

16 OF MAY 19, 2015


PATRICK OGAWA
ACTING EXECUTIVE OFFICER

May 19, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST APPROVAL TO ENTER INTO A STANDARD SERVICES AGREEMENT WITH THE
STATE OF CALIFORNIA, OFFICE OF TECHNOLOGY FOR INFORMATION TECHNOLOGY
SERVICES FOR A BACKUP DATA REPOSITORY
ALL DISTRICTS – 3 VOTES**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ()
DISAPPROVE ()**

SUBJECT

The Internal Services Department is requesting Board approval to negotiate, and execute a Standard Services Agreement for Information Technology services with the State of California, Office of Technology site located in Rancho Cordova.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the Director of Internal Services Department (ISD) to and execute a Standard Services Agreement with the State of California (State), Office of Technology (OTech) for Information Technology (IT) services for a tertiary data repository site and a fully managed local area network for an initial term of one-year with two one-year renewal options.
2. Authorize the Director of ISD, or his designee, to execute extension options, and to provide for expansion of the Agreement as defined herein.
3. Authorize the Director of ISD, or his designee, to amend, augment, and modify the Agreement when authorized as a result of a local emergency by the Board of Supervisors.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the above recommendations is to authorize the County to enter into an Agreement with the State for a tertiary data repository site. This third, remote location in Rancho Cordova will serve as a backup data repository and possible recovery site should the two in-region data centers located in Downey and Santa Ana suffer simultaneous catastrophic failures. This backup location will house data storage equipment that contains backup copies of County IT systems operated by ISD and provides the County with the ability to restore its critical data in the event of a disaster. The premises will host existing ISD-owned equipment contained in secure cabinets with the network equipment and connectivity.

Approval of the Agreement, substantially similar to Exhibit A, in addition to recommendations No. 2 and 3 will allow effective administration of the Agreement. ISD will take the following steps to inform your Board of change orders, modifications, or augmentations to the Agreement requiring the increase in additional IT capacity or services provided by the State as follows:

1. Provide a 30 day Board Notification of the department's intent to augment the Agreement for additional IT services due to expansion needs and growth in data storage; or
2. Should the Board proclaim a local emergency which directly impacts the County's IT infrastructure, ISD will immediately request an increase of service from the State and notify the Board within 30 days after the initial request to the State.

OTech technical staff will provide routine maintenance pursuant to the standard inter-agency agreement, while ISD staff will perform routine backup services remotely. Workspace will be provided to ISD staff on an as-needed basis, at no additional cost to the County.

Implementation of Strategic Plan Goals

This recommendation is consistent with County Strategic Plan Goal 1: Operational Effectiveness: Maximize the effectiveness of processes, structure, and operations to support the timely delivery of customer-oriented and efficient public service.

FISCAL IMPACT/FINANCING

The County's first year cost under the Agreement is \$225,600, which includes (a) \$61,500 for premium services for three data cabinets, (b) \$69,800 for managed local network charges, (c) \$84,500 for telecommunications charges, and (d) \$9,800 for one-time installation costs.

The rates under this Agreement for year two and three may not increase more than 5 percent per Fiscal Year (FY).

ISD has adequate appropriation for the first-year costs in its FY 2015-16 Recommended Budget, and will request appropriation for the additional two (2) one-year option costs in future FY budget requests, in addition to any increased cost due to expansion of IT services. ISD recovers all these costs through usage-based charges to customer departments and will not require additional net County cost for the Agreement.

Should the data repository needs of the County expand, ISD anticipates the expansion will not exceed the addition of two fully managed cabinets. The expansion costs would be \$87,500 for Year 1, \$92,000 for Year 2, and \$96,500 for Year 3.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement will provide the County with use of a backup data repository site of sufficient distance to maintain the County's critical data in the event of a disaster in the greater Los Angeles area. The Agreement provides for the following:

- A one-year term commencing July 1, 2015 through June 30, 2016, with two one-year renewal options.
- A total first-year agreement amount of \$225,600, which includes \$9,800 of one-time costs for installation.
- An option for the County to cancel the Agreement upon a 45 calendar day written notice.

The Agreement also includes the County's standard terms and conditions that are applicable to the State, including various Board policy provisions.

The Chief Information Office (CIO) has reviewed this request and recommends approval. The CIO analysis is attached (Attachment A).

The attached Agreement has been approved as to form by County Counsel.

CONTRACTING PROCESS

ISD contacted the State to inquire about possible reciprocal services for a data repository that would meet the County's needs. OTech advised that it had implemented, on behalf of the State, the California Government Enterprise Network (CGEN) utilizing vendor managed services available on its CALNET 3 contract. The CALNET 3 contract was competitively bid and provides a comprehensive array of telecommunications and network services to public entities throughout the State. The CALNET 3 contract provides an acceptable, competitive procurement option to obtain a tertiary data repository site. In addition, the rates in the Agreement are consistent with what has been charged to other public agencies for similar services.

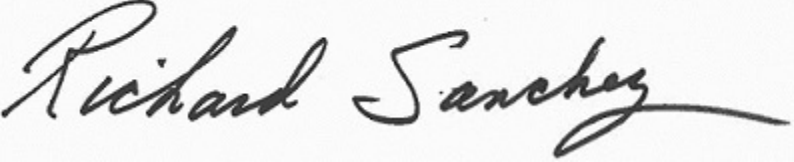
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current services provided. Rather, this would support the department's efforts in ensuring the recovery and backup of a data repository should a catastrophic event occur within the region. This strategy is consistent with current ISD plans for a primary and secondary data center located in the Los Angeles region to provide real-time redundancy for critical systems.

CONCLUSION

The Executive Office of the Board of Supervisors is requested to return two stamped copies of the approved Board letter to the Director of ISD.

Respectfully submitted,

Reviewed by:




JIM JONES
Director

RICHARD SANCHEZ
Chief Information Officer

JJ:DC:TTJF:KHK

Enclosures

c: Chief Executive Office
Executive Office, Board of Supervisors
County Counsel

California Department of Technology
Administration Division
P.O. Box 1810
Rancho Cordova, CA 95741-1810



Date: March 15, 2014

SUBJECT: 2014/2015 AGREEMENT PACKAGE FOR NON-STATE CUSTOMERS

The California Department of Technology (Department) 2014/2015 Agreement package is available for your completion and signature. All renewals are due 60 calendar days prior to the expiration date in order to execute in a timely manner.

Annual agreements are normally established on a fiscal year basis (July 1 – June 30), however, they may cover any time period. To streamline paperwork, the Department encourages multiple year Agreements. Please note that we have significantly streamlined the IAA document. The IAA will no longer be used to document requirements for specific systems. Please contact your Account Manager or Customer Representative if your department has a need of this type. Furthermore, please be advised that if your department does not have an IAA in place, your department will not have the ability to submit Service Requests. The expiration date on all approved Agreement Packages may be extended by submitting an amendment in advance of the expiration date.

The DGS State Contracting Manual, Volume 3, Chapter 8.3.3, requires purchase documents to be signed by a county, city, district, or other local public body must be accompanied by a resolution, order, motion, or ordinance for the purchase document. Please ensure a copy of such documentation is submitted with your completed Agreement Package. Lack of such documentation will result in a delay of execution.

Please complete two (2) Agreement Packages with original signatures no later than 60 calendar days prior to the expiration date, and return to the IAA Processing Analyst at:

California Department of Technology
Procurement and Contracting Services Branch
Attention: IAA Processing Analyst (MS Y-18)
P.O. Box 1810
Rancho Cordova, CA 95741-1810

Once the Agreement Package is fully executed, one (1) original copy will be returned to the attention of the designated Contract Analyst (Exhibit C).

If you have any questions regarding the Agreement Package template, please contact the California Department of Technology IAA Processing Analyst at (916) 431-5089, by email at iaaprocessinganalyst@state.ca.gov, or to be redirected to the Contract Manager, clerical staff at (916) 431-5397. If you have any other questions regarding services, costs, rates, etc., please contact your Customer Representative.

J. HERRERA, Software & Personal Services Contracts Unit Manager
Administration Division

Enclosures

AGREEMENT INSTRUCTIONS

These instructions apply to agreements submitted by customers for services beginning on or after July 1, 2014.

The entire Agreement Package is available to download from the California Department of Technology web page at:
<http://www.dts.ca.gov/customers/service.asp>.

STANDARD 213 IT - STANDARD AGREEMENT FOR I.T. GOODS/SERVICES ONLY

- The Standard 213 IT is the cover page for the Agreement Package to which the exhibits are attached.
- Sections titled "NON-STATE AGENCY NUMBER" and "CONTRACTOR NUMBER," are provided for identifying purposes that pertain to the IAA.
- The term date is normally established by fiscal year (July 1 – June 30), however, a multi-year Agreement is encouraged.
- The encumbrance amount of your Agreement will be estimated based upon the California Department of Technology's current rate schedule, which can be viewed at:
<http://www.dts.ca.gov/customers/rates.asp?key=23>.

EXHIBIT A – GENERAL INFORMATION

EXHIBIT B - BUDGET DETAIL AND PAYMENT PROVISIONS

- The California Department of Technology will render invoices monthly in arrears and the Customer agrees to pay monthly upon receipt of invoice.

EXHIBIT C – CUSTOMER COMPLETION FORM

- Contact information must be provided to the California Department of Technology for recordkeeping purposes.
- The completion of Operational Recovery Inquiry is critical information to the California Department of Technology for planning and meeting customer demand/requirements for these essential services.

Exhibit D – Additional Terms & Conditions

- The parties agree that the Additional Terms and Conditions set forth in Exhibit D shall be applicable to this Agreement.

Order of Precedence

- In reading and interpreting this Agreement the Exhibits shall have precedence in the following descending order
 - Exhibit A
 - Exhibit B
 - Exhibit C
 - Exhibit D

STANDARD AGREEMENT

FOR I.T. GOODS/SERVICES ONLY

NON-STATE AGENCY

NON-STATE AG

CONTRACTO

Agreement is entered into between the Non-State Agency and the Contractor named below

NON-STATE AGENCY NAME

(hereafter called Customer)

CONTRACTOR'S NAME



CALIFORNIA DEPARTMENT OF TECHNOLOGY

(hereafter called Contractor)

2. The term of this Agreement is: _____ through _____
3. The maximum amount \$ _____ of this Agreement is: _____
4. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Agreement:

Exhibit A – General Information	1 page
Exhibit B - Budget Detail and Payment Provisions	1 page
Exhibit C – Customer Completion Form	1 page
Exhibit D – Additional Terms and Conditions	

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i>		Agreements are exempt from DGS approval per Delegation DIA-003
CALIFORNIA DEPARTMENT OF TECHNOLOGY		
BY <i>(Authorized Signature)</i>	DATE SIGNED	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
JENNIFER HERRERA, Contract Manager		
ADDRESS		
P.O. Box 1810, Rancho Cordova, CA 95741-1810		
NON-STATE AGENCY		
NON-STATE AGENCY NAME		
BY <i>(Authorized Signature)</i>	DATE SIGNED	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

GENERAL INFORMATION

1. This Agreement is entered into by and between _____ (hereinafter referred to as the "Customer") and the State of California (hereinafter referred to as the "California Department of Technology" or the "Department, or Contractor") for the Customer to obtain information technology services, materials, or equipment. This Agreement shall represent the cost of ongoing services provided to the Customer by the Department along with the cost of projected new services to be requested through the Service Request (SR) process. This Agreement shall be augmented through the Department's SR process with any resulting mutually agreed upon contractual terms becoming a part of this Agreement, as if fully set forth herein. This Agreement also provides for payment for these services pursuant to State Administration Manual (SAM) section 8752-8752.1 and section 3.03 of the State Contracting Manual.

BUDGET DETAIL AND PAYMENT PROVISIONS

1. GENERAL CUSTOMER OBLIGATIONS

- A. Return completed Agreement Renewal Package to the California Department of Technology (Department) no later than 60 calendar days prior to the expiration date. In the event a Customer does not return a completed Agreement Renewal Package during the required time frame, the Department will escalate the matter with the Customer. Any costs incurred by the Department on behalf of the Customer after the expiration date will be billed to the Customer with full payment due within 30 calendar days.
- B. The Customer must provide 45 calendar days cancellation notice for specific services to be terminated. Lead-time for cancellation of services is vendor-dependent and may require additional lead-time for processing termination documents. The Customer must submit a Service Request through [CSS](#) to notify OTEch of the intent to terminate services. The targeted completion date noted on the Service Request must allow time for the lead-time required to cancel services. Due to the daily accumulation of system utilization and cost activity within the billing system, retroactive termination of services will not be considered. For additional information regarding lead-times for canceling services, please contact your Customer Account Lead.
- C. Customers are required to submit payments for services billed at the specified rates. Payment must be received within 90 calendar days of receipt of invoice. After 90 calendar days, the Department will escalate payment issues with the Customer. Use of services and goods provided by the Department to the Customer constitutes an obligation, which must be paid.
- D. In the event the Customer utilizes, requires, accepts or requests services that exceed the amount authorized by this Agreement, the Customer is responsible for all charges incurred and agrees that either party may amend this Agreement, in writing, to provide payment to the Department to the extent services have been provided. Such payment for services incurred beyond the amount authorized by this Agreement shall be made payable on or before the agreement expiration date. If, after the conclusion of the subject agreement period, it is determined that monies above and beyond that which was authorized by this Agreement are owed to the Department for services received by the Customer, either party may amend the Agreement, in writing, with the Customer agreeing to pay the outstanding amount in full, no later than 60 calendar days from discovery of the outstanding payment due.

2. INVOICING

- A. Upon receipt of appropriate invoices for services rendered in accordance with this Agreement, the Customer agrees to compensate the Department for services billed in accordance with the rates specified herein.
- B. Invoices shall include the Department Agreement Number, and shall be submitted in duplicate not more frequently than monthly in arrears to the billing address identified in Exhibit C.

3. PAYMENT TERMS

- A. Costs for this Agreement shall be computed in accordance with SAM sections 8752 and 8752.1.
- B. The cost of subscribing to the Department of Technology's IT services is based upon the published Billing Rate Schedule, which is subject to change upon 30 calendar days' prior written notice. The rates billed under this contract, however, may not increase more than 5% per fiscal year (July 1 – June 30) during the term of this contract. These rates may be viewed on the Department's web site at: <http://www.dts.ca.gov/customers/rates.asp?key=23>
- C. Customer agrees to pay Department monthly upon receipt of invoice. Department will issue monthly invoice in arrears to the Customer.

4. CUSTOMER RESPONSIBILITY

It will be the responsibility of the Customer to notify the Department in writing within five (5) State business days after receipt/installation of goods from a vendor or other State agency (i.e., equipment, telecommunications lines, and software products). Such notification shall be sent to:

California Department of Technology
Warehouse Receiving at: warehousereceiving@state.ca.gov

CUSTOMER COMPLETION FORM

CALIFORNIA DEPARTMENT OF TECHNOLOGY:

CONTRACT ADMINISTRATOR:	CUSTOMER REPRESENTATIVE:
IAA PROCESSING ANALYST IT PROCUREMENT & CONTRACT SERVICES BRANCH	CUSTOMER RELATIONS BRANCH
P.O. BOX 1810, MS Y-18 RANCHO CORDOVA, CA 95741-1810	P.O. BOX 1810 RANCHO CORDOVA, CA 95741-1810
PHONE: (916) 431-5089 FAX (916) 463-9914 EMAIL: iaaprocessinganalyst@state.ca.gov	PHONE: (916) 431-5454 FAX (916) 454-7273

CUSTOMER:

CONTRACT ANALYST:	BILLING CONTACT:
IT Contract Section Manager	
ADDRESS: 9150 E. Imperial Highway	ADDRESS:
PHONE: FAX EMAIL:	PHONE: FAX : EMAIL :
CONTRACT ADMINISTRATOR	TECHNICAL CONTACT:
ADDRESS:	ADDRESS:
PHONE: FAX : EMAIL:	PHONE: FAX : EMAIL :

PAYMENT TERMS

The Customer agrees to pay California Department of Technology (Department) monthly in arrears upon receipt from Department.

OPERATIONAL RECOVERY INQUIRY

The Department offers Operational Recovery Hot Site Services. Quotations for this service will be provided by the Department's Operational Recovery Coordinator and are based on agency individual requirements.

- A.** Does your agency plan to use this service during the term of this Agreement? Yes No
- B.** If yes, are funds included in this Agreement for these services? Yes No
- C.** If no, when will the Agreement be amended to add funds for these services? Date

In order to provide for the emergency restoration of the Customer's systems in the event of a disaster, the Customer must separately subscribe to the Operational Recovery Services offered by the Department. If the Customer has not subscribed to these Operational Recovery Services, the Customer's operations may not be restored for a significant length of time and the Department will not be responsible for the proper operation of the Customer's systems in the event of a disaster.

EXHIBIT D
ADDITIONAL TERMS AND CONDITIONS



BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

STATE OF CALIFORNIA

FOR

TERTIARY SERVICES

**SAMPLE CONTRACT PROVISIONS
TABLE OF CONTENTS**

PARAGRAPH	TITLE	PAGE
8.0	STANDARD TERMS AND CONDITIONS.....	1
8.1	AMENDMENTS	1
8.2	ASSIGNMENT AND DELEGATION.....	1
8.3	AUTHORIZATION WARRANTY	2
8.4	COMPLIANCE WITH APPLICABLE LAW	2
8.5	COMPLIANCE WITH CIVIL RIGHTS LAWS	3
8.6	CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW	6
8.7	COUNTY'S QUALITY ASSURANCE PLAN.....	4
8.8	DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS	4
8.9	FACSIMILE REPRESENTATIONS.....	4
8.10	FAIR LABOR STANDARDS	4
8.11	FORCE MAJEURE	5
8.12	GOVERNING LAW, JURISDICTION, AND VENUE	5
8.13	INDEPENDENT CONTRACTOR STATUS.....	5
8.14	INDEMNIFICATION	6
8.15	GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE	6
8.16	INSURANCE COVERAGE	11
8.17	NONDISCRIMINATION AND AFFIRMATIVE ACTION.....	12
8.18	NON EXCLUSIVITY.....	13
8.19	NOTICE OF DELAYS	13
8.20	NOTICE OF DISPUTES	13
8.21	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT	14
8.22	NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW	14
8.23	NOTICES.....	14
8.24	PUBLIC RECORDS ACT.....	14
8.25	PUBLICITY	15
8.26	RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT	15
8.27	RECYCLED BOND PAPER.....	17
8.28	SUBCONTRACTING	17
8.29	TERMINATION FOR CONVENIENCE	18
8.30	TERMINATION FOR DEFAULT	19

**SAMPLE CONTRACT PROVISIONS
TABLE OF CONTENTS**

PARAGRAPH	TITLE	PAGE
8.31	TERMINATION FOR IMPROPER CONSIDERATION.....	30
8.32	TERMINATION FOR NON-APPROPRIATION OF FUNDS.....	21
8.33	VALIDITY.....	21
8.34	WAIVER.....	21
8.35	TIME OFF FOR VOTING.....	21
9.0	UNIQUE TERMS AND CONDITIONS.....	22
9.1	HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA")	22
9.2	OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT	23
9.3	PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICA	24
9.4	DATA DESTRUCTION GHT	25

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

- 8.1.1 For any change which affects the scope of work, term, contract sum, payments, or any term or condition included under this Contract, an amendment to the Contract shall be prepared and executed by the Contractor and by **Department Head or his/her designee.**
- 8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and by **the Department Head.**
- 8.1.3 The (Department Head or his/her designee or Board of Supervisors), may at his/her sole discretion, authorize extensions of time as defined in Paragraph 4.0 - Term of Contract. The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and by **the Department Head.**

8.2 ASSIGNMENT AND DELEGATION

- 8.2.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegatee or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.
- 8.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest

themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract.

- 8.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.3 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

8.4 COMPLIANCE WITH APPLICABLE LAW

- 8.4.1 In the performance of this Contract, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 8.4.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any

such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 8.6 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and to reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

8.5 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit D - Contractor's EEO Certification.

8.6 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

8.7 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract as specified in this Contract.

8.8 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.8.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.8.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

8.9 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.10 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages,

overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

8.11 FORCE MAJEURE

8.11.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

8.11.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

8.12 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.13 INDEPENDENT CONTRACTOR STATUS

8.13.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the

County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.13.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.13.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.14 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

8.15 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

8.15.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Internal Services Department/IT Contracts
9150 E. Imperial Highway, MS 46
Downey, CA 90242
Attention: IT Contracts, Section Manager

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

8.15.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.15.3 Cancellation of or Changes in Insurance

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

8.15.4 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

8.15.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.15.6 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

8.15.7 Waivers of Subrogation

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.15.8 Sub-Contractor Insurance Coverage Requirements

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional

insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

8.15.9 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.15.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.15.11 Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

8.15.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.15.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.15.14 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.16 **INSURANCE COVERAGE**

8.16.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

8.16.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.16.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to

satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

8.17 NONDISCRIMINATION AND AFFIRMATIVE ACTION

- 8.17.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.17.2 The Contractor shall certify to, and comply with, the provisions of Exhibit D - Contractor's EEO Certification.
- 8.17.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.17.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 8.17.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.17.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular

business hours to verify compliance with the provisions of this sub-paragraph 8.28 when so requested by the County.

8.17.7 If the County finds that any provisions of this sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While

the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

8.17.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.18 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

8.19 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.20 NOTICE OF DISPUTES

The Contractor shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Director is not able to resolve the dispute, the (Department Head), or designee shall resolve it.

8.21 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.22 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

8.23 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits E - County's Administration and F - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The (Department Head, or his/her designee) shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.24 PUBLIC RECORDS ACT

8.24.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or

“proprietary”. The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

- 8.24.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked “trade secret”, “confidential”, or “proprietary”, the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney’s fees, in action or liability arising under the Public Records Act.

8.25 PUBLICITY

- 8.25.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor’s need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County’s Project Director. The County shall not unreasonably withhold written consent.

- 8.25.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this subparagraph 8.37 shall apply.

8.26 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment

and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

- 8.26.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.26.2 Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.
- 8.26.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's

dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract..

8.27 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.28 SUBCONTRACTING

8.28.1 The requirements of this Contract may not be subcontracted by the Contractor **without the advance approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

8.28.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

8.28.3 The Contractor shall indemnify, defend, and hold the County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were the Contractor employees.

8.28.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

8.28.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing

services under this Contract. The Contractor is responsible to notify its Subcontractors of this County right.

- 8.28.6 The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and Subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.28.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.28.8 The Contractor shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by the County from each approved Subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles
Internal Services Department/IT Contracts
9150 E. Imperial Highway, MS 46
Downey, CA 90242
Attention: IT Contracts, Section Manager

before any Subcontractor employee may perform any work hereunder.

8.29 TERMINATION FOR CONVENIENCE

- 8.29.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.
- 8.29.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:
 - Stop work under this Contract on the date and to the extent specified in such notice, and

- Complete performance of such part of the work as shall not have been terminated by such notice.

8.29.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with sub-paragraph 8.38, Record Retention AND Inspection/Audit Settlement.

8.30 TERMINATION FOR DEFAULT

8.30.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

- Contractor has materially breached this Contract; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.30.2 In the event that the County terminates this Contract in whole or in part as provided in sub-paragraph 8.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.

8.30.3 Except with respect to defaults of any Subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in sub-paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its

sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "Subcontractor(s)" means Subcontractor(s) at any tier.

- 8.30.4 If, after the County has given notice of termination under the provisions of this sub-paragraph 8.43, it is determined by the County that the Contractor was not in default under the provisions of this sub-paragraph 8.43, or that the default was excusable under the provisions of sub-paragraph 8.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 8.42 - Termination for Convenience.
- 8.30.5 The rights and remedies of the County provided in this sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.31 TERMINATION FOR IMPROPER CONSIDERATION

- 8.31.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of

default by the Contractor.

8.31.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.31.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

8.32 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.33 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.34 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this subparagraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.35 TIME OFF FOR VOTING

The Contractor shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section

14000). Not less than 10 days before every statewide election, every Contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

9.0 UNIQUE TERMS AND CONDITIONS

9.1 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA")

- 9.1.1 Contractor expressly acknowledges and agrees that the provision of services under this Agreement does not require or permit access by Contractor or any of its officers, employees, or agents, to any patient medical records/patient information. Accordingly, Contractor shall instruct its officers, employees, and agents, that they are not to pursue, or gain access to, patient medical records/patient information for any reason whatsoever.
- 9.1.2 Notwithstanding the forgoing, the parties acknowledge that in the course of the provision of services hereunder, Contractor or its officers, employees, and agents, may have inadvertent access to patient medical records/patient information. Contractor understands and agrees that neither it nor its officers, employees, or agents, are to take advantage of such access for any purpose whatsoever.
- 9.1.3 Additionally, in the event of such inadvertent access, Contractor and its officers, employees, and agents, shall maintain the confidentiality of any information obtained and shall notify Director that such access has been gained immediately, or upon the first reasonable opportunity to do so. In the event of any access, whether inadvertent or intentional, Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all liability, including but not limited to, actions, claims, costs, demands, expenses, and fees (including attorney and expert witness fees) arising from or connected with Contractor's or its officers', employees', or agents', access to patient medical records/patient information. Contractor agrees to provide appropriate training to its employees regarding their obligations as described hereinabove.

9.2 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT

- 9.2.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through the Contractor's work pursuant to this Contract. The Contractor, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in the County all of the Contractor's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to the Contractor's work under this Contract.
- 9.2.2 During the term of this Contract and for five (5) years thereafter, the Contractor shall maintain and provide security for all of the Contractor's working papers prepared under this Contract. County shall have the right to inspect, copy and use at any time during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.
- 9.2.3 Any and all materials, software and tools which are developed or were originally acquired by the Contractor outside the scope of this Contract, which the Contractor desires to use hereunder, and which the Contractor considers to be proprietary or confidential, must be specifically identified by the Contractor to the County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by the Contractor as "Proprietary" or "Confidential" on each appropriate page of any document containing such material.
- 9.2.4 The County will use reasonable means to ensure that the Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of the Contractor.
- 9.2.5 Notwithstanding any other provision of this Contract, the County will not be obligated to the Contractor in any way under sub-paragraph 9.4.4 for any of the Contractor's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by sub-paragraph 9.4.3 or for any disclosure

which the County is required to make under any state or federal law or order of court.

9.2.6 All the rights and obligations of this sub-paragraph 9.4 shall survive the expiration or termination of this Contract.

9.3 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

9.3.1 The Contractor shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Contractor's work under this Contract. County shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Contractor's defense and settlement thereof.

9.3.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:

- Procure for County all rights to continued use of the questioned equipment, part, or software product; or
- Replace the questioned equipment, part, or software product with a non-questioned item; or
- Modify the questioned equipment, part, or software so that it is free of claims.

9.3.3 The Contractor shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by the Contractor, in a manner for which the questioned product was not designed nor intended.

9.3.4

9.4 DATA DESTRUCTION

Contractor(s) and Vendor(s) that have maintained, processed, or stored the County of Los Angeles' ("County") data and/or information, implied or expressed, have the sole responsibility to certify that the data and information have been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled *Guidelines for Media Sanitization*. Available at:

<http://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88 Rev.%201>

The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that are geographically located within the County, or external to the County's boundaries. The County must receive within ten (10) business days, a signed document from Contractor(s) and Vendor(s) that certifies and validates the data and information were placed in one or more of the following stored states: unusable, unreadable, and indecipherable.

Vendor shall certify that any County data stored on purchased, leased, or rented electronic storage equipment and electronic devices, including, but not limited to printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, *Guidelines for Media Sanitization*. Vendor shall provide County with written certification, within ten (10) business days of removal of any electronic storage equipment and devices, that validates that any and all County data was destroyed and is unusable, unreadable, and/or undecipherable.



RICHARD SANCHEZ
CHIEF INFORMATION OFFICER

Office of the CIO
CIO Analysis

NUMBER:	DATE:
CA 15-07	4/29/2015

SUBJECT: REQUEST APPROVAL TO ENTER INTO A STANDARD SERVICES AGREEMENT WITH THE STATE OF CALIFORNIA, OFFICE OF TECHNOLOGY FOR INFORMATION TECHNOLOGY SERVICES FOR A BACKUP DATA REPOSITORY	
RECOMMENDATION: <input checked="" type="checkbox"/> Approve <input type="checkbox"/> Approve with Modification <input type="checkbox"/> Disapprove	
CONTRACT TYPE: <input checked="" type="checkbox"/> New Contract <input type="checkbox"/> Sole Source <input type="checkbox"/> Amendment to Contract #: <input type="checkbox"/> Other: Describe contract type.	
CONTRACT COMPONENTS: <input type="checkbox"/> Software <input type="checkbox"/> Hardware <input type="checkbox"/> Telecommunications <input checked="" type="checkbox"/> Professional Services	
SUMMARY: Department Executive Sponsor: Jim Jones, Director, Internal Services Department Description: The Internal Services Department (ISD) is requesting approval to execute a standard services agreement for information technology services with the State of California (State), Office of Technology (OTech). Contract Amount: Maximum Contract Sum will be \$690,000, if the initial one-year term, and both one-year options are executed. Funding Source: ISD Budget. <input type="checkbox"/> Legislative or Regulatory Mandate <input type="checkbox"/> Subvened/Grant Funded: 0	

**Strategic and
Business Analysis**

PROJECT GOALS AND OBJECTIVES:

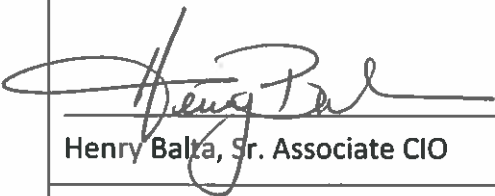



The primary project goal is to implement a secured tertiary data repository site in the State's Rancho Cordova Data Center to house County-owned data storage equipment, which will contain backups of critical County IT systems that are hosted by ISD. The project goals and objectives are clearly described and reasonable.

BUSINESS DRIVERS:

The primary business driver for this effort is to protect the County's assets by preventing loss of critical data in case ISD's Downey Data Center (DDC) and Santa Ana Local Recovery Center (LRC) suffer simultaneous failures. This effort will allow the County to restore its critical data in case of a disaster.

	<p>PROJECT ORGANIZATION:</p> <p>ISD will utilize existing staff, in conjunction with staff from the State's Office of Technology, to manage and support the secured tertiary data repository and related processes. The General Manager of ISD/ITS is the project sponsor.</p> <hr/> <p>PERFORMANCE METRICS:</p> <p>The success of the project implementation will be determined, in part, by ISD's ability to have the solution in place by July 1, 2015. Operationally, the success of the project will be determined by ISD's ability to execute nightly incremental and weekly full data backups to the data repository.</p> <hr/> <p>STRATEGIC AND BUSINESS ALIGNMENT:</p> <p>This project is well aligned with the County's business objectives and consistent with the CIO Strategic Directions. It is also consistent with the County's data center consolidation strategy.</p> <hr/> <p>PROJECT APPROACH:</p> <p>The project planning and approach will require close coordination with technical staff from the State's OTech.</p> <hr/> <p>ALTERNATIVES ANALYZED:</p> <p>ISD considered a leading disaster recovery vendor, but found the vendor's infrastructure and network bandwidth insufficient to support the County's needs. ISD also considered a cable provider for this service, but decided to proceed with the State option because of the possibility of future reciprocal agreements and the ability to easily expand the footprint, if necessary.</p>
Technical Analysis	<p>ANALYSIS OF PROPOSED IT SOLUTION:</p> <p>The implementation of a secured tertiary data repository will provide the County an extra layer of protection against data loss in case the Downey Data Center and Santa Ana Local Recovery Center experience simultaneous failures. Because of the 26 mile distance between the DDC and LRC, it is a best practice to have a tertiary location outside of the possible disaster strike zone.</p> <p>Data from all three ISD computing environments (mainframe, UNIX, and eCloud) will be backed up in the Rancho Cordova Data Center, which is a Tier III data center. The LRC and Rancho Cordova Data Center will be connected using a secure point-to-point 10 gigabit circuit, which will be used to transmit nightly incremental backups and weekly full backups. The data storage equipment that will be installed in the Rancho Cordova Data Center is repurposed equipment from ISD's computing environment. The only additional expense will be the purchase of a virtual tape library (approximately \$70K), which ISD will purchase from its existing budget.</p>

	<p>It is important to note that the secured tertiary data repository is not another County data center. It is simply a “data bunker” where an additional copy of system data is stored. In case of a simultaneous failure of the DDC and LRC, ISD’s preferred approach would be to rebuild a complete computing environment in the Los Angeles area, and retrieve the data after the disaster. This is a reasonable approach because of the design of the County’s Wide Area Network.</p>														
Financial Analysis	<p>BUDGET:</p> <p>Contract costs</p> <p>Ongoing costs:</p> <table> <tr> <td>Year 1</td><td>\$215,800</td></tr> <tr> <td>Year 2</td><td>\$226,600</td></tr> <tr> <td>Year 3</td><td>\$237,900</td></tr> <tr> <td>Services (3 years)</td><td>\$ 680,300</td></tr> <tr> <td>Sub-total Contract Costs:</td><td>\$ 680,300 (including option years)</td></tr> <tr> <td>Total one-time costs:</td><td>\$ 9,800</td></tr> <tr> <td>Total ongoing costs over 3 years</td><td>\$ 690,100</td></tr> </table> <p>The first year cost, including one-time installation charges of \$9,800, will be \$225,600. Second year optional cost will be \$226,600, and third year optional cost will be \$237,900. The two additional one-year option costs may increase up to 5 percent per year, which is included in the costs above. ISD will recover the costs through hosting rates for Windows, UNIX, and mainframe systems. No additional Net County Cost will be required.</p>	Year 1	\$215,800	Year 2	\$226,600	Year 3	\$237,900	Services (3 years)	\$ 680,300	Sub-total Contract Costs:	\$ 680,300 (including option years)	Total one-time costs:	\$ 9,800	Total ongoing costs over 3 years	\$ 690,100
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Total one-time costs:	\$ 9,800														
Total ongoing costs over 3 years	\$ 690,100														
Risk Analysis	<p>RISK MITIGATION:</p> <p>There are minimal risks to the proposed approach. In fact, this effort is intended to reduce risks related to data loss.</p> <p>The Chief Information Security Officer (CISO) reviewed the Board Letter and did not identify any IT security or privacy related issues. All current ISD security practices will be utilized.</p>														

CIO Approval	PREPARED BY:
	 _____ Henry Balta, Sr. Associate CIO  _____ Date
	APPROVED:
	 _____ Richard Sanchez, County Chief Information Officer  _____ Date

Please contact the Office of the CIO (213.253.5600 or info@cio.lacounty.gov) for questions concerning this CIO Analysis. This document is also available online at <http://ciointranet.lacounty.gov/>